IN THE HIGH COURT OFJUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.299 OF 2007
IN
SUIT NO.1603 OF 1985

Rajesh Kantilal Shah & anr .. Plaintiffs
vs
Kishore K.Badiani & ors .. Defendants

Ms.Hema Desai i/b Jayesh Desai for Plaintiff
Mr. S.K.Keswani for 3rd highest bidder Mr.Mangal Singh Chip Respt no. ..
Ms S.Nadar i.b Raymond & Samuel for Applicants
Ms.B.R.Pai for Sameer Ambardar- Bidder Respt no.5 in Ch.S.
Mr.K.K.Shroff for Agent of C.R.
Mr.Arif Doctor i.b Sonal Doshi & Co for Deft no.1
Mr.Mamta Sadh i.b Shamim & Co for Deft no.2 (c-d)
Mr.D.V.Deokar Ist Asst to C.R.& Mr.C.R.Bhogaonkar, 2nd Asst to C.R. Present.

CORAM :SMT ROSHAN DALVI, J
DATE: 9th March, 2007

P.C.

1. The suit has been filed in respect of the suit premises which is run as a restaurant/hotel in the name of 'Picnickers Paradise'. Court Receiver was appointed upon an interim application of the plaintiff. The defendant no.2 supports the plaintiff. Initially,the defendant no. 1 was appointed agent of the Court Receiver. Court Receiver found the defendant no. 1 running a brothel and carrying on immoral activities in

the suit premises.

2. It may be mentioned that such a business constitutes an offence under the Immoral Trafficking Prevention Act (ITPA) the premises are forthwith liable to be sealed and attached and the brothel keeper is liable to be arrested under the provisions of the Act. An FIR has been filed since 3rd January, 1986. It is not known what criminal action has been taken.

3. Nevertheless in the civil suit corrective action, rather punitive action, has been taken. The defendant no.1 has been disallowed from being agent of the Court Receiver.

4. Since as far as back as 19th November, 1986 in view of the Court Receiver's report showing illegal activities being carried on in the suit premises, Court Receiver was directed to take possession by an order dated 19th November, 1986. That order came to be confirmed in appeal on 26th November, 1986. A S.L.P.

therefrom has been dismissed on 12th December, 1986.

5. Thereafter in another Notice of Motion No.218 of 2003 an order has been passed upon observing that someone else is acting as agent of the Court Receiver to conduct a hotel and has nexus with defendant no.1. Since serious offences of trafficking in women and children by running a brothel were prima facie seen to be substantiated, the Court passed orders observing that the defendant no.1 cannot be allowed to participate in the bidding for the agency of the hotel and if that was done, it would undo the earlier orders passed. To put an end to the illegal and immoral activities finally the Court took specific corrective action calling upon the receiver to auction the business and appoint his agent without allowing the defendant no.1 or his agents, servants, proxies directly or indirectly from participating in the bidding. The Court specifically kept it open to the plaintiff to take objections if it is found that the bidders are agents or

proxies of defendant no.1.

6. Defendant no.2 A supports the plaintiff and hence directions given by the Court as well as liberty granted by the Court apply to him.

7. In the bidding of the Court Receiver, one Manoj ... was the highest bidder upon the offer of **Rs.8.25 lacs. H**e was allowed to be agent of the Court Receiver. It is stated that he received certain threats. He has withdrawn his bid. The second highest bidder is one Ranchod Patel at Rs.8 lacs. In the absence of the highest bidder, the court would have to accept the bid of Ranchod Patel. It will have to be seen whether he also withdraws his bid. That would itself prima facie show that contesting offerers and third parties are threatened by defendant no.1 or his agents.

8. Ranchod Patel has not appeared in Court. Court Receiver would have to inform Ranchod Patel

and ascertain from, him whether he proposes to continue his offer, execute the agency agreement and deposit usual amount of 3 months royalty to the Court Receiver.

9. One Mangal Singh Chip was the 2nd highest bidder. He has appeared in court and affirms his offer. If Ranchod Patel does not desire to pursue his bid, Mangal Singh Chip may be allowed to execute the Agency Agreement on the usual deposit, terms and conditions to be performed by him forthwith.

10. 3 parties appear to be interested in taking over as agents of the Court Receiver. The bid of these parties are lower than that of Ranchod Patel or Magal Singh Chip. They are one Dharmesh whose highest bid is Rs.5 lacs, one Sameer whose highest bid is Rs.7 lacs, one Vinod who has not bid at the auction, and hence cannot be considered and one Ganesh whose highest bid is Rs.6.50 lacs whose has expired.

Dharmesh has also not appeared in Court. Sameer whose bid is Rs.1.25 lacs lower than the highest bid has been represented in court. It is not known how he expects the court to consider and accept this offer when two other higher offers are received upon the bid before the Court Receiver.

12. It is contended on behalf of the defendant No. 2A that all the aforesaid bidders except the highest and 2nd highest bidder Ranchod Patel and Mangal Singh Chip are agents and proxies of defendant no.1. These allegations are not made without substance. The defendant no.1 has sought to substantiate this from record. The undertakings which are required to be given by the offerers are shown to the court and summarised in a statement Exhibit 15 to the affidavit in support of the Chamber Summons. It is seen that stamp papers **are** not purchased by the parties who have given the undertaking which is an illegal act under the Stamp Act itself. The stamp papers have

been purchased in the names of other persons except for stamp paper of Dharmesh. 2 stamp papers purchased on 12th December, 2006 bear consecutive nos. 256 and 257 and have been purchased by one Shankar Mohite instead of the agents who have given the **undertaking. Ganesh, Dharmesh and Sameer have purchased stamp papers from the same stamp vendor. The stamp papers bear consecutive nos. 254, 255, 256, 257 and 258. The serial nos of the stamp papers also bear an eerie consecutivity. They are 582,583,584,585,and 586. Hence, the stamp papers are purchased on the same day and at the same time bearing consecutive nos. Out of these stamp papers used by the aforesaid 3 agents, 5 stamp papers bear such consecutive nos. Only first page of the affidavit of Dharmesh bears an independent stamp number and is shown purchased by Dharmesh himself. It is seen that though Sameer and Ganesh have taken stamp papers purchased by others which is an illegal act, Dharmesh has only taken care to see that the first**

paper is purchased in his name and has used the 2nd page containing the consecutive stamp papers as stamp papers purchased by Sameer and Ganesh.

13. The fact that they are proxies of defendant no.1 is seen also from several photographs relied upon by the defendant no.2 showing all the persons along with son of defendant no.2 on the road outside HSBC Bank. Though it is argued on behalf of the defendant no.1 that such an act cannot show any click or cartel. It is surprising how competitors of a prospective business, who have conflicting interests are all together outside the Court Receiver's office when they bid against one another in his office ?

14. The income tax paid by Sameer, Ganesh and Dharmesh are to the extent of maximum Rs.5000/- . It is not known how they would pay the royalty of several lacs of rupees to the Court Receiver. Their bids cannot be considered or accepted.

15. The court is informed that these offerers are in a click and threaten other independent genuine offerers to keep control of their brothel running business in the suit premises. Since the Court cannot be threatened or bullied by any party and must hear those who cannot speak and understand what may have transpired in respect of the suit premises which is alleged to have been used as a brothel in the past, the court must ascertain for itself the true intent and meaning of the bid, the latent reason for the appearance and non-appearance of the parties before the Court and the anxiety as well as hope of the 3rd highest bidder to be able to carry the bid through.

16. The present agent continues in the suit premises. He pays Rs.3,50,000/- . He has paid royalty only up to December, 2006. He had offered to pay royalty for the month of January, 2007. He was allowed to continue up to 31st January, 2007. He has yet not paid that royalty.

17. It has fallen upon the Court to see that the malaise of trafficking and prostitution which is sought to be carried on by indirect means is stopped in the suit premises.

Hence, the following order :

(1) The present agent is directed to hand over possession on 31st January, 2007 to the Receiver. He shall forthwith pay the royalty for the month of January, 2007 and as well as February, 2007 and part March, 2007. The receiver shall collect the royalty and recover possession from him.

(2) Ranchod Patel who is now the highest bidder and failing him Mangal Singh Chip,the 2nd highest bidder shall be allowed to take up the suit premises as agent of the Court Receiver

on usual undertaking terms and conditions. If, for whatever reason, they do not take over the agency and fail to execute undertaking and deposit the royalty amount as called upon by the receiver, Court Receiver shall invite bids for a completely different business to be carried on in the suit premises.

The affidavit of Samir Ambarkar though affirmed in earlier Chamber Summons No.36 of 2007 is allowed to be tendered and used in this Chamber Summons.

The affidavit in reply of defendant no.1 taken on record.

(Smt R.S.Dalvi,J)